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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

HENRIK JOHANSEN,

Plaintiff and Appellant,

v.

BARBARA NANIA,

Defendant and Respondent.

B267735

Los Angeles County
Super. Ct. No. BD484837

APPEAL from an order and a judgment of the Superior Court of Los Angeles County, Holly J. Fujie, Judge. Affirmed.

Law Offices of John F. Nicholson and John F. Nicholson for Plaintiff and Appellant.

Law Office of Paul Kujawsky and Paul Kujawsky for Defendant and Respondent.

INTRODUCTION

Henrik Johansen (husband) appeals from a judgment on property division and spousal support and from a court order awarding his former wife Barbara Nania (wife) attorney fees and sanctions under sections 2030 and 271 of the Family Code.¹ Husband primarily challenges the trial court's reliance on wife's forensic accountant's analysis to find husband's gross income from his business is \$18,000 per month. We find substantial evidence supports this calculation as well as the court's other findings. We conclude the court did not abuse its discretion in its evidentiary rulings, its community property division, its spousal support order, or its award of attorney fees and sanctions. We therefore affirm.

FACTS AND PROCEDURAL BACKGROUND

1. *Pretrial proceedings*

Consistent with our standard of review, we state the relevant facts in the light most favorable to the judgment. Husband and wife married in October 1995. During the marriage, the couple owned aircraft-related businesses. They bought and sold aircraft parts through their primary business, Standby Parts Inc. (Standby). Before filing for divorce, the couple sold a commercial building they owned through one of their companies. They split the profit, each taking \$1.6 million.

The couple separated on August 19, 2005. Husband filed for divorce on April 28, 2008, followed by wife; the cases were consolidated. On September 30, 2013, the trial court entered a "status only" judgment of dissolution dissolving the marriage as of May 29, 2013.

¹ Undesignated statutory references are to the Family Code.

The trial court entered various pretrial orders. On July 14, 2010, the court ordered husband to pay wife pendente lite spousal support of \$784 per month, retroactive to March 1, 2010. On July 21, 2011, the court ordered terminating issue and evidentiary sanctions against husband because he failed to produce documents in response to a December 2009 discovery request by wife. The court “precluded [husband] from introducing any financial evidence in any trial which pertain[s] or relate[s] to the issues encompassed by” wife’s 2009 production demand.² The court also ordered sanctions against both parties during pretrial proceedings.

Wife was convicted of arson in 2014 and incarcerated from August 2014 through April 2015. In March 2015, the court heard husband’s motion—filed February 3—to terminate spousal support.³ Wife’s declaration in response requested an increase in spousal support based on husband’s alleged increase in income. The court’s minute order states: “The court suspends the order for spousal support, as long as the respondent is in custody, or until final order at the time of [trial].” The court then continued the spousal support motion to the date of trial. Although a reporter was present, the reporter’s transcript of that hearing is not part of the appellate record.

2. *Trial on reserved issues*

Husband dismissed his attorney on May 1, 2015. He unsuccessfully applied ex parte to continue the May 28 trial. The court tried the reserved issues of spousal support, property and

² The 2009 production demand was wife’s trial exhibit 434. It is not part of the appellate record. Husband claims he attached it to his reply brief, but he did not.

³ That motion is not part of the appellate record.

debt division, and attorney fees on May 28 and 29, and June 5, 2015. Husband represented himself at trial; wife had counsel.

Wife retained a forensic accountant, David Wall, who prepared a marital balance sheet based on his review of financial and other records. Husband did not have a forensic accountant. Wall presented his most recent version of the balance sheet on the first day of trial. The court asked husband to read the updated balance sheet during the lunch recess and decide which values he agreed with. We summarize the contested issues.

a. *The \$2 million business inventory*

Husband contested the value of Standby's business inventory. On February 1, 2010, the court had ordered husband to take possession of aircraft parts stored at a warehouse in Hawthorne. The court directed husband to catalogue the parts he received and provide an estimate of the value of each before March 12, 2010.

Essentially, husband argued that beginning in 2007 wife had control of their company's inventory worth over \$2 million, but when he went to retrieve it as ordered, much less was there.⁴ The inventory he picked up was contained in about 500 square feet while the original inventory was in a 12,000-square-foot warehouse. Husband asked the trial court to attribute the \$2 million value to wife.

The court concluded husband could not establish the value of the total inventory that existed before he was incarcerated and when he left the company in 2008 (2008 inventory).⁵ Husband

⁴ Husband served a four-month prison term beginning in mid-2007. He and Standby were indicted in 2005.

⁵ Husband testified wife fired him at the end of April 2008 (after he returned from prison).

did not have an appraisal of that inventory. He argued wife's former counsel had stated in a trial brief that wife had \$2 million worth of inventory in her possession. Husband also sought to introduce into evidence a list reflecting the total cost of the 2008 inventory as \$2.3 million. He had that list with him at trial, but had not included it in his exhibit book because it "couldn't fit." He claimed he could not have provided the 2008 inventory cost list to wife earlier because he "could only print it yesterday because it's in an old program Doss [*sic*] and I didn't know how to do it."

Wife objected. The court concluded the 2011 discovery order precluded husband from introducing evidence not produced in response to wife's 2009 production demand, including the \$2.3 million cost list. The court also noted husband could have provided that list earlier, and so refused to consider it.⁶

Ultimately, the court concluded there was insufficient evidence to establish the inventory's value or to attribute it to wife.

b. *The cargo door actuator*

Wife contended husband misappropriated one piece of the business inventory—a cargo door actuator valued at between \$55,000 and \$85,000. Husband denied he had taken it.

⁶ Husband's trial exhibit 14, lodged with this court, appears to be a summary of the value of the inventory represented in the DOS document husband printed the day before trial. He also lodged the DOS document with this court on a CD as exhibit 45. That 212-page document is dated April 25, 2008 and lists aircraft parts, their condition, and costs. The trial court considered neither exhibit. We therefore do not consider these exhibits except to determine whether the court abused its discretion in not admitting them into evidence.

Husband testified Standby acquired the actuator when the business bought it as part of an aircraft tear down; he removed it from an aircraft in Mojave in 2007. He testified that before he was incarcerated the company listed the actuator for sale on the internet.

Wife presented evidence that California Airsales, Inc., a company husband worked for after April 2008, sold a cargo door actuator with the same serial number in July 2008. Marcos Silva, a friend of husband, owns California Airsales. Husband lent him more than \$600,000.

Husband asserted the serial number on the actuator was not the original, but a replacement identification number. He claimed he had put the actuator in the Standby inventory, but the actuator disappeared.

The court found husband gave the actuator to Silva.

c. *Husband's income*

Wall, wife's forensic accountant, calculated husband's monthly gross income as \$19,873. He reduced that figure to \$18,410 at trial. Wall analyzed bank records from husband's sole proprietorship, Damex International, which began operations in November 2010.

Husband contested Wall's calculations, but not his expert qualifications. He argued Wall incorrectly categorized loan and investment payments as income. Husband also argued Wall improperly excluded business expenses as personal expenses.

The court did not permit husband to challenge—without an accounting—the payments Damex made that Wall assumed were for personal expenses. The court allowed a decrease in income based on payments husband established were loans.

d. *Spousal support arrears*

Wall calculated spousal support arrears from March 1, 2010 through March 15, 2015 at \$55,626.21, including interest

through June 2, 2015. He testified he did not include amounts beyond the date of the court's March 2015 order suspending spousal support, but he did apply accrued interest beyond that date.

Wall credited a \$5,263.38 payment made through a levy on husband's bank account. A second levy of \$7,834.12 was not credited to the support arrears because wife never received the funds. Husband testified the money was taken from his account. The court ordered that if the money were found, it would be applied to amounts husband owed wife or returned to husband if nothing was owed.

e. *Evidence relating to permanent spousal support*

Wife presented evidence she had little or no income potential. At the time of trial, wife was 64 years old. She testified she does not have a college degree or vocational training. She does not hold any licenses or certifications. Wife also is a convicted felon.

Husband did not submit a vocational examination. He presented evidence of wife's November 2011 loan modification application where she stated she had a lifetime income of \$3,000 a month in dividends. Wife testified that statement was in a letter submitted with her request for a loan modification, but a paralegal had written it and she had not seen it. Husband also presented wife's bank statements from August through October 2011 showing deposits of approximately \$3,000 each month.

The court concluded wife knew she had lied on the loan application. The court also found husband failed to present evidence that wife "receives [those payments] now and she receives [them] regularly."

The court acknowledged that, without a vocational examination, it could impute only minimum wage to wife until

she turned 65 the next April. At that point, wife no longer would be required to work and no income could be imputed to her.

The court went through each of the section 4320 factors governing spousal support and then heard argument. The court ordered husband to pay spousal support of \$3,000 a month, stepping down to nothing over three years.

3. *Post-trial award of attorney fees, costs, and sanctions*

At the end of the trial, the court ordered supplemental briefing on the issues of attorney fees and costs under section 2030 and sanctions under section 271 to be decided without hearing.

Wife requested \$125,000 in attorney fees and costs under section 2030 and \$75,000 more in fees as a sanction under section 271. She argued fees and costs were warranted based on her lack of income and husband's "superior access to funds through his declared and undeclared income." She contended sanctions also were warranted based on husband's failure to pay sanctions and fees the court had ordered him to pay for discovery violations and efforts to conceal assets. Wife submitted declarations and invoices from her attorney and Wall.

Husband had retained counsel who filed an opposition to wife's requests. Husband contended wife was not entitled to a contribution from him for her fees and costs under section 2030. He argued Wall improperly calculated his income by failing to take into account legitimate business expenses and by including his new wife's income in the calculation of husband's monthly income. Husband argued his tax returns presented at trial, prepared by a CPA, showed his average income for 2012 and 2013 was just over \$32,000 a year. He included with his opposition an updated July 2015 income and expense declaration estimating his gross monthly income as \$3,500.

Husband also argued wife's attorney's invoices were impossible to decipher and did not justify the amount of time counsel spent on the issues. He contended Wall's fees were disproportionate to the benefits wife obtained from his work. Finally, husband argued there was no basis to grant wife fees as a sanction. He asserted wife failed to disclose the \$1.6 million she received in the post-separation, pre-divorce sale of community property as income or otherwise to account for its disposition, which could be used for fees. Husband also noted he made many settlement offers early in the proceedings, including to split the couple's assets equally, but wife rejected them.

On August 14, 2015, after reviewing "the file, the evidence[,] and the briefs," the court ordered husband to pay wife's counsel \$75,000 under section 2030 "as a contribution to her attorney's fees and costs incurred and \$25,000 . . . in [s]ection 271 sanction[s]."

4. *Entry of judgment*

The court entered judgment on April 26, 2016. The court considered husband's objections to the proposed judgment filed on February 10, 2016 and incorporated those issues into the judgment by interlineation. On the issues relevant to this appeal:

- The court found husband owed wife \$55,626 in spousal support arrears.
- The court found "no competent evidence was introduced at trial regarding any credit to temporary spousal support that should be attributed to [wife's] incarceration."
- The court found the levy of \$7,834.12 from husband's account was placed in a separate account. The court ruled wife could claim those funds and, when she did, that amount then would be credited to husband.

- The court found husband gave the cargo door actuator to Silva without compensation. The court awarded it to husband at a value of \$30,000.

- The court ordered husband to pay wife permanent spousal support as follows: (a) \$3,000 per month after exhausting the \$18,710 equalization payment wife owed husband; (b) \$2,000 per month after one year; (c) \$1,000 per month the next year; and (d) nothing the year after that. The court based the award on the section 4320 factors, husband's gross income of \$18,000 per month, and wife's earnings of zero.

The court retained jurisdiction to enforce the terms of the judgment.

5. *Appeals and consolidation*

Husband appealed separately from the August 2015 post-trial order (number B267735) and the April 2016 judgment (number B275804). On husband's motion, opposed by wife, we consolidated the two appeals under number B267735.

We granted husband permission to lodge the trial exhibits. We also granted his motion to augment the record to include various court orders.

Wife moved to dismiss the appeal under the disentitlement doctrine. Wife also asked us to take judicial notice of court orders and husband's guilty plea to contempt in March 2018 for failure to pay ordered spousal support and attorney fees. Husband opposed both. We deferred ruling on wife's motion and request until our consideration of the appeal on the merits.

Having considered the moving and opposing papers, we (1) grant wife's request for judicial notice filed June 15, 2018, and (2) deny wife's motion filed January 19, 2017 to dismiss the appeal. We opt to consider husband's appeal on the merits and

do not exercise our discretion to apply the disentitlement doctrine.⁷

DISCUSSION

Husband contends the trial court abused its discretion in (1) excluding evidence of the \$2 million inventory and failing to attribute the value to wife; (2) admitting evidence of the cargo door actuator and assigning its value to husband; (3) calculating husband's income; (4) calculating spousal support arrears; (5) awarding spousal support under section 4330; (6) awarding attorney fees and costs under section 2030; and (7) awarding sanctions under section 271.

1. *Standards of review*

We review a trial court's division of community property for abuse of discretion. (*In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, 276 (*Schleich*)). Spousal support orders, attorney fees awards, and sanctions also are reviewed for abuse of discretion. (*Ibid.*) We review a trial court's admission or exclusion of evidence for abuse of discretion as well. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9.)

"In exercising its discretion the trial court must follow established legal principles and base its findings on substantial evidence. If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court." (*In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 47, fn. omitted.) "To the extent that a trial court's exercise of discretion is based on the facts of the case, it will be upheld "as long as its determination is within the range of the evidence

⁷ We do not condone husband's failure to comply with the court's orders. We also acknowledge the court found husband in contempt after accepting his guilty plea last year.

presented.” ’ ” (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443.) “ ‘The power of the appellate court therefore begins and ends with the determination as to whether the trial court had *any* substantial evidence (whether or not contradicted) to support its conclusions.’ ” (*In re Marriage of Barth* (2012) 210 Cal.App.4th 363, 372.) “When reviewing for substantial evidence, ‘all conflicts must be resolved in favor of the prevailing party, and all legitimate and reasonable inferences must be indulged in order to uphold the trial court’s finding. [Citation.] In that regard, it is well established that the trial court weighs the evidence and determines issues of credibility and these determinations and assessments are binding and conclusive on the appellate court.’ ” (*In re Marriage of Berman* (2017) 15 Cal.App.5th 914, 920.)

Thus, “ ‘the trial court’s order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made. [Citations.]’ [Citation.]” (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866 (*Keech*)). As the appellant, husband bears the burden to show the trial court abused its discretion. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

2. *The trial court did not abuse its discretion when it did not attribute the \$2 million inventory to wife and attributed the \$30,000 cargo door actuator to husband*

a. *Applicable law*

Family Code section 2550 requires the court to “divide the community estate of the parties equally.” “As long as the court exercises its discretion in a legal manner, its decision will be affirmed on appeal if there is substantial evidence to support it.” (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572.) “ ‘[T]he court has broad discretion to determine the manner in

which community property is divided and the responsibility to fix the value of assets and liabilities in order to accomplish an equal division.’ ” (*Ibid.*) Thus, as long as the trial court’s determination of an asset’s value “ ‘is within the range of the evidence presented, we will uphold it on appeal.’ ” (*Ibid.*)

b. *The trial court acted within its discretion when it excluded evidence of the \$2 million inventory list*

The court excluded husband’s proposed trial exhibit 45, labeled “\$2,000,000 ‘Missing’ Community Inventory,” on two grounds: (1) the list was subject to the 2011 discovery order precluding husband from introducing financial evidence at trial on the issues covered by wife’s 2009 production demand, and (2) husband did not produce the list to wife before trial.

Husband contends the court failed to recognize there were two inventories—the retrieved inventory and the \$2 million inventory. But the court understood the distinction and acknowledged husband’s argument: “[Y]ou are saying that there was a large amount of property . . . at one point before you went into prison [and] when it was ordered that . . . the remaining property be transferred to you, that less was there, okay.” Husband agreed.

Although there was discussion about both inventories and the lack of valuation of the retrieved inventory,⁸ the court explained the 2011 discovery order barred the evidence of the

⁸ At trial, husband could not provide the value of the inventory he retrieved in March 2010, listed on his trial exhibit 15. He said, “It is impossible to do an appraisal because all of the parts are leftovers.” He argued his former counsel asked wife to provide the underlying paperwork for the parts, so husband could estimate their value, but wife never did. As the trial court noted, husband presented no evidence that he served a demand for production of that paperwork or moved to compel its production.

\$2 million inventory. The court said husband “just . . . telling” the court there were “a lot of things in that warehouse” was not sufficient. The court continued, “So, therefore, what we have is a list that shows something, not an appraisal, but just a general list, an inventory of what it is that you took possession of.”

We do not read the court’s statement as confusing the two inventories. The court explained to husband that, after excluding the \$2 million inventory list (trial exhibits 14 and 45), the remaining evidence is merely a list of the parts husband retrieved (trial exhibit 15). The court examined the 2011 discovery order and the 2009 production demand. It determined the production demand covered “inventories,” and the \$2 million inventory list was a document husband could have produced in response to the demand. He did not.

Husband contends the 2011 discovery order could not have applied to the \$2 million inventory list because (1) he did not have the list when wife served her 2009 production demand, and (2) the list was not responsive to the demand. He argues wife had control of the business in 2008 because she fired him on April 29, 2008. But husband presented no evidence at trial that he did not have possession or control of the excluded exhibit. The \$2 million inventory list is dated April 25, 2008. Thus it existed both before husband left the company and at the time of the production demand. Husband argued “the inventory was not available” to him at the time of the demand because it was in a DOS format he could not access, but he never testified the list in its DOS format was newly discovered or not in his possession. Instead, his excuse for not producing the list until the first day of trial was he did not know how to open the DOS-stored document.

Husband also contends the production demand was limited to inventories of “personal property” and “business personal property” only. At trial, husband questioned whether the 2011

discovery order barred only financial information, but the court concluded it covered “inventories” as well.

We do not quibble with the trial court’s interpretation of the production demand or the discovery order. We do not have the demand before us, other than what husband has quoted in his reply brief. The court reasonably could conclude a list of business inventory costs totaling over \$2 million fell within the court’s order precluding husband from introducing at trial “any financial evidence” that “pertain[ed] or relat[ed] to the issues encompassed by” the production demand, including wife’s request for inventories of “personal property” and “business personal property.”⁹ We find no abuse of discretion.¹⁰

c. *The court was not required to treat a statement about the inventory in a trial brief as a judicial admission*

Wife’s February 2012 trial brief listed an inventory held by Standby with “a fair market value of \$2 million” as one of the marital assets. Husband contends this statement was a judicial admission requiring the court to find the inventory was in wife’s possession and to assign an offset of that community property to him. Wife’s counsel said his predecessor had prepared the brief and it contained no statement by wife under penalty of perjury.

⁹ In any event, the \$2 million inventory list would not have established that the inventory was in wife’s possession at the time of trial. Thus, its admission into evidence would not have required the court to attribute that amount to wife.

¹⁰ The court also acted within its discretion when it excluded the \$2 million inventory list because husband failed to give it to wife’s counsel before trial. Husband’s excuse of not knowing how to open the document until the night before trial did not require the court to waive his failure to comply with the court’s general rule requiring pretrial disclosure of non-impeachment exhibits.

The court stated it might be a judicial admission, but the court “want[ed] to hear more.”

The trial court noted wife had control of the business for years and said it had questions about what happened to the inventory. The court again asked husband if he had any documents “to confirm that what [he] received was not identical to or close to the inventory that [he] left when [he] left the company.” Husband could not remember and did not have anything with him. The court reiterated that, because husband had not produced the inventory list before trial, it was barred. The court ultimately did not treat the statement in the trial brief as a judicial admission, concluding there was insufficient evidence of \$2 million worth of community business inventory.

Again, we find no error. While a statement need not be made under oath to constitute a judicial admission (see *Smith v. Walter E. Heller & Co.* (1978) 82 Cal.App.3d 259, 268-269), judicial admissions cannot be “extracted” from every document filed by a party. (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746.) They normally come from pleadings—complaints, answers, demurrers, and cross-complaints—or stipulations. (*Id.* at pp. 746-749 [separate statement of undisputed facts in support of summary judgment motion did not constitute judicial admission preventing party from contesting fact at trial].) Accordingly, the trial court could have decided the statement in the trial brief was not a judicial admission at all.

In any event, the court had discretion to disregard the purported judicial admission. (*Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 871.) The statement in the 2012 trial brief that the community business held \$2 million in inventory could have been based on incorrect or old information. We do not know and we need not speculate. Husband never asked wife if she had the inventory, and wife never testified the inventory was in her

possession. Wife's counsel did not know the basis or the reason for his predecessor's statement in the trial brief. Given these uncertainties and the lack of corroborating evidence, the court did not abuse its discretion when it disregarded the purported judicial admission.

d. *The trial court acted within its discretion in admitting evidence about the cargo door actuator*

Husband contends the court erred in admitting evidence of the cargo door actuator because wife neither raised it at the trial readiness conference nor included documents about it in her exhibit list before trial.

As wife notes, husband did not object to the introduction of the cargo door actuator evidence. On the first day of trial, the trial court asked, "What is the cargo door actuator?" Husband said, "That's a new one." Wife's counsel explained it was a piece of equipment the business owned that husband misappropriated. The court questioned husband. He testified he did not take the actuator. He contended it was part of the \$2 million inventory that went missing.

Husband's statement, "That's a new one," did not constitute an objection to the actuator evidence, which was introduced the next day. Husband never argued wife should not be permitted to inquire about the actuator or introduce evidence about it. Accordingly, husband forfeited the issue on appeal. (*Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 853.)

Moreover, the actuator evidence was impeachment. Wife was not required to exchange impeachment exhibits. Husband testified he did not give the actuator to Silva. Wife introduced documents showing the actuator Silva's company offered for sale had the same serial number as the actuator husband removed from the airplane in the desert.

In any event, husband cannot show prejudice. The court gave husband a full and fair opportunity to challenge the evidence wife presented about the actuator. The court permitted husband to testify about the actuator first and to introduce new rebuttal evidence to support his contention that the actuator was not the same as the one Silva was selling. Husband also introduced evidence of the actuator's value.

e. *The evidence supports the trial court's allocation of the cargo door actuator to husband*

While there were conflicts in the evidence about what happened to the cargo door actuator, wife presented evidence from which the trial court reasonably could infer husband gave it to Silva without compensation.

Husband worked for Silva's company California Airsales from sometime in May 2008 until at least November 2010. Husband loaned Silva more than \$600,000 without repayment. Wife introduced a photograph of the actuator's data plate she took the day husband removed the actuator from the aircraft. The data plate included the part number with the unique serial number "0006." Wife also introduced third-party inventory lists dated May 28, May 29, June 1, June 2, June 6, and June 9, 2008 listing the same cargo door actuator part number for sale by California Airsales. Finally, she introduced a California Airsales packing slip and "certification form" for the sale of a cargo door actuator with the same part number and manufacturer as the actuator at issue, also listing "0006" as the serial number.

Husband asked wife whether the low serial number on the Standby actuator was not the original serial number but an identification number assigned by another "shop" that had replaced the data plate. Wife was not aware of that practice. The court also wondered about the low serial number, noting

the plate in the photograph appeared to be a replacement, “very sloppily put [on],” rather than an original.

The parties and the court also discussed whether the serial number on the California Airsales documentation looked more like an “0008” than an “0006.” Husband introduced an invoice for the sale of the same type of cargo door actuator to his new company Damex in November 2010 and a photograph of its data plate. The serial number for that actuator included letters as well as numbers. Husband argued the absence of letters on the Standby actuator’s data plate showed it had been replaced.

The court noted no one from the manufacturer was there to testify about the validity of the serial numbers. The court observed “the evidence provided by both sides [was] not comprehensive.” After reading the California Airsales documents, the court stated “substantial amounts of money” had gone from husband to Silva, “hundreds and hundreds of thousands of dollars which have not been repaid, which have not been really documented.” The court continued, “And it’s difficult to believe that a reasonable business person would have spent what could have been a means of getting back on his feet after a prison term on giving money to a friend to remodel his home and to do all sorts of stuff with absolutely no repayment plan.” The court ultimately found husband had given the Standby actuator to Silva.

While different conclusions could be drawn from the evidence about whether the serial number on the Standby actuator matched the serial number on the California Airsales actuator, the court reasonably could conclude it did. Although husband presented evidence an actuator with the same part number that he bought in 2010 had letters and numbers in its serial number, the serial number on the California Airsales invoice does not include letters, only the “0006” number. The

court reasonably could have found the absence of letters in the serial number on the California Airsales invoice made it more probable it was the same actuator Standby acquired, which also had no letters. We will not “review the evidence to see if there is substantial evidence to support the losing party’s version of events.” (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245.)

The court’s determination that the value of the actuator should be attributed to husband fell “ ‘within the range of the evidence presented.’ ” (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 197.) The court therefore did not abuse its discretion.

f. *The evidence supports the trial court’s valuation of the actuator*

The court’s main concern with the actuator evidence appears to have been about its value. The court lamented, “[W]hat I’m finding [is] really -- a real dearth of evidence regarding the value of that actuator.”

Wife testified a “fully overhauled” cargo door actuator ranged from \$55,000 to \$85,000 based on vendor and customer quotes. Husband testified an overhauled cargo door actuator at the time was worth between \$50,000 and \$55,000, but cost about \$20,000 to overhaul. He submitted a 2010 Damex invoice showing he had purchased an actuator for \$16,500 in “as[-] removed condition.”

After questioning the foundation for the parties’ exhibits, the court valued the actuator at \$30,000 based on husband’s testimony. Wife acquiesced. Husband cannot claim prejudice from a lack of evidence when the court considered his own testimony to assign the actuator’s value.

**3. *The trial court did not err in calculating
spousal support arrears***

Husband contends the court erred in finding he owed wife \$55,626 in temporary spousal support arrears because it failed (1) to deduct \$12,500 in spousal support suspended during wife's eight-month incarceration, and (2) to credit him with two levies from his bank accounts totaling \$12,534.50.

a. Suspended spousal support

At the time of trial, husband had not paid wife any of the temporary spousal support ordered. The court acknowledged the March 18, 2015 order suspended spousal support as long as wife was in custody, but the court found "no competent evidence was introduced at trial regarding any credit to temporary spousal support that should be attributed to [wife's] incarceration."

The court specifically asked Wall if he had taken the suspension into account when he calculated the arrears husband owed wife. Wall explained, "there were no further spousal amounts added beyond the date of that order terminating spousal support. I did not apply it retroactively. . . . However[,] I did continue to accrue the interest on the spousal support award." Wall's exhibit shows his calculations did not include spousal support payments after March 15, 2015. Accordingly, we read the court's judgment (1) to recognize Wall did not include spousal support during wife's incarceration, *as of the March 18, 2015 order*, and (2) to have found husband failed to present evidence that spousal support should have been suspended before that date.

Husband, however, reads the March 18, 2015 order to require suspension of spousal support not from the date of the order, but retroactive to the beginning of wife's incarceration on August 26, 2014. As wife notes, nothing in the order says it applies retroactively. The order reads: "The court [] suspends

the order for spousal support, as long as the respondent is in custody, or until final order at the time of trial.” The order uses “suspends” in the present tense. From that we can infer the court intended to suspend the spousal support order from that point forward, as long as wife remained incarcerated or until a permanent spousal support order was entered at trial. The court therefore did not abuse its discretion when it did not make further deductions to account for wife’s incarceration in the months before the March 18, 2015 order.¹¹

b. Levies

Husband also contends the court failed to credit him with the two levies made earlier on his bank accounts to satisfy spousal support arrears. Wall did deduct the first levy of \$5,263.38 made on June 6, 2014, from his calculation of spousal support. He credited that payment to interest owed. At trial, husband acknowledged Wall had taken the June 6 payment into account.

A second levy of \$7,834.12 apparently was executed on husband’s account on June 11, 2014, but wife evidently never received that payment. Wife’s counsel told the court neither wife nor the revenue officer had the funds. He said the sheriff department’s website showed the funds had not been received, and wife would testify she had not received the funds. Husband presented evidence of his account balance showing the amount was there but then gone, but he had no evidence the money had gone to wife.

The court ordered the parties to investigate what happened to the levy. If the money were located, the court would credit

¹¹ Even if the court wished to make its March 18, 2015 order retroactive, it would have been limited to the date husband filed his motion, February 3, 2015. (§ 3651(c)(1); see also § 3603.)

husband as having made the \$7,834.12 payment from the date of the levy. If the money were not found, husband would receive no credit. The court incorporated that directive into its judgment.¹²

Husband contends the court should have credited him with having made the payment regardless of whether wife received the funds from the levy. Relying on *Del Riccio v. Superior Court* (1952) 115 Cal.App.2d 29 (*Del Riccio*), husband argues, “[o]nce funds are in the hands of the levying officer, the funds [are], in fact, the property of the judgment creditor.” But there, the trial court ordered the sheriff not to pay any moneys already in its possession from a levy executed on defendant’s account. (*Id.* at pp. 29-30.) The appellate court held the trial court could not “undo what had already been done so as to deprive the creditor of ownership and use of money collected under the writ.” (*Id.* at p. 31.) The court explained, “When the writ has been regularly issued and executed, money collected, while in the hands of the officer, is property of the judgment creditors and not the debtor. Nothing can be done with it other than to turn it over to the creditor.” (*Ibid.*) Here, the levied funds are not in the sheriff’s possession to be ordered turned over to wife—or to husband, for that matter.

Moreover, as wife notes, section 697.710 of the Code of Civil Procedure, enacted after *Del Riccio*, provides, “A levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of two years after the date of issuance of the writ unless the judgment is sooner satisfied.” Wife contends the levy thus did not extinguish

¹² In husband’s objection to the proposed judgment, filed by his new counsel, he asserted his investigation revealed the funds levied against his account had been “placed in a separate account” with the same institution.

husband's interest in the funds, but gave wife a security interest in them, relying on a federal court's application of California law in *Chavez v. United Prosperity Group, Inc.* (N.D.Cal., July 26, 2016, 15-cv-05736-VC) 2016 U.S.Dist. Lexis 97579, at *5-6 [noting *Del Riccio* superseded by statute and finding sheriff's levy on bankrupt judgment debtor's account did not "extinguish [its] ownership of the funds in the levied bank account" where sheriff was custodian of funds]. (See also *Adir Internat., LLC v. Superior Court* (2013) 216 Cal.App.4th 996 [sheriff's levy on judgment debtor's account created execution lien on funds requiring release of funds to debtor upon filing appeal bond, but court without authority to order return of funds after sheriff erroneously disbursed them to judgment creditor].)

Thus, at the time of trial, wife was not yet the "owner" of the funds. As no one was in possession of the funds, we cannot say the court abused its discretion in fashioning the remedy it did—ordering the parties to cooperate to "confirm the existence of the [American Funds] levy account" and to recover the funds.

4. *Substantial evidence supports the trial court's calculation of husband's income from his business*

a. *Evidence of husband's income*

Wall calculated husband's monthly gross income at \$19,873 based on his analysis of the income generated from husband's sole proprietorship Damex from November 2010 through November 2013. Wall then revised his calculation of husband's free cash flow to \$18,410, based on the evidence. To reach that figure, Wall analyzed subpoenaed bank records from November 2010 through November 2013, the last date available at the time of the subpoena. Wall testified those records included "the most current information available as of the date of trial." Wife submitted Wall's expert report and declaration with exhibits

to support his income calculation. Wall also brought to court 20 boxes of the records and data he reviewed.

Wall described his process of reviewing and analyzing the records. He testified he and his staff analyzed the funds and categorized them as income, expense, or capital contribution to calculate gross revenue. Wall excluded some payments Damex made, including payments on husband's personal residence, in his calculation of Damex's net profits. In his declaration, Wall elaborated that he determined some funds paid out of the Damex account "were for non-business or discretionary expenses, for the benefit of [husband], his new girlfriend, or his new son," including mortgage payments on husband's personal residence with his new family, payments for a leased vehicle, payments to husband's son's pediatrician and school, cash withdrawals, payments to personal credit card accounts, and payments of "an apparently personal nature to numerous payees," such as Costco, clothing retailers, restaurants, entertainment vendors, salons, and toy stores.

Both husband and the court questioned Wall about his calculations. Husband cross-examined Wall about his characterization of particular payments as income. For example, husband said Wall had miscategorized deposits from a man named Maldonado as income, when they were loans Maldonado had made to Damex and Damex had repaid. Wall searched his database and found payments from Damex to Maldonado in excess of the payments from Maldonado to Damex. The court asked Wall why his spreadsheet did not reflect the payments to Maldonado as business expenses. Wall explained,

"Maldonado appeared to have some type of close relationship with [husband]. We noticed that the incoming wire transfer, which was in essence the initial funding of Damex[,] came from a Mexican

bank in an amount just under the amount that would trigger a suspicious activity report. [¶] We noticed cash going back and forth in round numbers and we came to a professional determination that these were not legitimate business expenses.”

Wall then concluded husband was entitled to an increase in his business expenses, which would reduce his gross income.

The court also confirmed that Wall’s analysis found personal expenses being paid from what appeared to be a business account. The court questioned husband about mortgage payments Damex made on his family’s home. Husband testified he ran the business out of half of the property. After husband testified part of the mortgage payment was taken as a business deduction on the company’s tax returns, the court agreed to allow husband to decrease his income by that portion of the mortgage payment if he could provide the relevant tax returns. The tax returns husband gave Wall revealed Damex *had not* deducted any mortgage payments on husband’s residence as a business expense. Wall, therefore, did not amend his income calculation to reflect those mortgage payments.

Husband also questioned Wall on his exclusion of payments Damex made to personal credit cards from the business expense category. Husband testified he and his new wife—who also worked for Damex—sometimes paid business expenses on their personal credit cards, including an American Express card in his new wife’s name. Damex then paid the entire credit card bill and the couple claimed personal expenses paid by Damex as income. Husband presented no receipts or statements or accountant testimony to differentiate between the business and personal expenses Damex paid on the cards.

Husband proposed to annotate Wall’s spreadsheet to indicate which payments should have been categorized as

expenses, such as loan repayments. Wife objected to husband's attempt to bring in evidence for the first time at trial to challenge Wall's calculation of husband's income. At first, the court ruled husband could submit evidence—such as a canceled check—to prove payments identified as revenue were in fact loan repayments. Ultimately, the court halted “further examination into every single one” of the items in Wall's cash flow analysis. The court explained it would not allow husband to “bring in evidence relating to the accounts . . . because, again, that's something that should have been done early on in discovery.” The court did not allow husband to challenge the American Express or other credit card payments as business expenses because husband had not provided an accounting during discovery to differentiate personal from business expenses.

The court admonished husband a number of times during the testimony, noting he should have sorted out the evidence about his income before trial. The court told husband he could not simply testify as to what payments were for business purposes: “You need to have the evidence in beforehand. It's not fair.”

Husband also did not have proof of his current income at the start of trial. His most recent income and expense declaration before the court was from 2013. His most recent tax return was for 2013, but he did not have it with him. Nor did he have a current accountant's statement of his income. The court ordered husband to provide Wall with a current income and expense declaration, and 2011 through 2013 personal and business tax returns.

The court ordered supplemental briefing from the parties and acknowledged it read husband's argument about his

income.¹³ The court found husband was not “entirely credible in his statements regarding his income, in light of the evidence” Wall analyzed “regarding his bank accounts and his expenses.” It concluded, based on Wall’s expert report, husband’s available cash flow was “something above \$18,000 per month.”

b. Substantial evidence supports the trial court’s income finding

Husband contends Wall based his calculations of husband’s income on unsupported assumptions and speculation, incorrectly categorized expenses and income, and failed to consider husband’s tax returns. We conclude the record supports Wall’s calculations and the assumptions he made to reach them. Sufficient evidence supports the court’s income finding.

Wall based his analysis on available financial records, not conjecture. His assumptions about the characterization of certain payments were reasonable under the circumstances. For example, Wall counted some payments as income, rather than loans as husband claimed, based on their suspicious nature. The court wondered aloud if it should have permitted husband to lower his income based on the loan payments, noting the payments were “slightly below the \$10,000 number” that triggers reporting.

Nor was the allocation of payments made to personal credit cards and a home residence as personal, not business, expenses speculative. The trial court reasonably could infer based on the evidence that the payments to husband’s new wife’s American Express card were for personal expenses. The court did not

¹³ In his supplemental trial brief husband again argued Wall failed to consider certain payments from the Damex bank account as business expenses. He asserted his actual income was \$3,000 per month.

blindly accept Wall's analysis. It questioned Wall about his reasons for categorizing the funds as he did. The court credited Wall's evidence and rationale over husband's unsupported testimony about his expenses. We cannot say Wall's testimony in his declaration and at trial was " "wholly unacceptable to reasonable minds." ' ' " (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065.)

Husband contends Wall's records were incomplete. But as wife argues, any lack of up-to-date records was husband's fault: he did not cooperate in discovery and failed to comply with court orders. Husband also argues the court erred in not asking about or considering the annotated income spreadsheet and calculation of business expenses from the payments on personal credit cards that he prepared after Wall testified. Husband asserts those exhibits show Wall misallocated \$201,102.16 as income over the three-year period and failed to reduce husband's income by another \$14,073 per month in business expenses.

The court acted within its discretion in not considering husband's late-provided annotations.¹⁴ Wall originally submitted his declaration (with a monthly income figure of \$19,873) in March 2015. Thus, husband knew more than two months before trial not only the bases for wife's contention that his monthly income was much greater than the \$3,000 he claimed, but also that Wall had treated the Damex payments to personal credit

¹⁴ Even if the court had considered them, husband provided no *evidence* to support his calculations, other than his general testimony, which the court already had called into doubt. The court's questioning of husband's credibility was not unreasonable. Husband had been incarcerated in 2007 for misrepresenting used aircraft bolts as new, and during trial he had testified he had deducted part of his mortgage payment as a business expense when he had not.

cards as payment of his or his family's personal expenses and the alleged loans as income. Yet husband presented no evidence to rebut Wall's categorization of those payments. He merely annotated Wall's spreadsheet of Damex's income to assert some entries were "loans or other forms of . . . non-income" revenue and to lump American Express payments into general business expense categories by year. He did not include an accounting, receipts, loan documents, or other proof to establish the payments were legitimate business expenses.

We defer to the trial court's credibility determinations and will not reweigh the evidence. (*Estate of Oadian* (2006) 145 Cal.App.4th 152, 168 ["testimony of a witness whom the trier of fact believes, whether contradicted or uncontradicted, is substantial evidence, and we must defer to the trial court's determination that the[] witness[] [was] credible"]; *In re Hardy* (2007) 41 Cal.4th 977, 1010 [appellate court defers to trier of fact's determination witness was not credible].)

We are not persuaded by husband's contention that his tax returns and income and expense declarations should trump Wall's calculations. Wall explained in his report that the \$3,000 per month income husband claimed in his 2013 declaration could not be reconciled with the financial records Wall reviewed. Wife presented Wall's analysis to rebut the presumption that the income stated in husband's income declarations and tax returns reflected his full income from his business. (Cf. *In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 34-35 [presumption of correctness of tax return rebutted by father's statement of income on loan application where father owned own business; "huge discrepancy" between tax returns, loan applications, income and expense declaration, and testimony].)

We are mindful of the substantial difference between the \$3,000 per month husband claims as income and the \$18,000 per

month Wall calculated. Viewing the evidence in the light most favorable to wife, however, we cannot say the court's figure is unsupported. It falls " 'within the range of the evidence presented.' " (*In re Marriage of Ackerman*, *supra*, 146 Cal.App.4th at p. 197.)

5. *Permanent spousal support*

Husband argues the court abused its discretion in awarding wife spousal support because it (1) did not consider wife's income, and (2) erred in calculating husband's available income for spousal support.

a. *Applicable law*

"An award of spousal support is a determination to be made by the trial court in each case before it, based upon the facts and equities of that case, after weighing each of the circumstances and applicable statutory guidelines." (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.) Section 4320 sets forth those mandatory guidelines, including "[t]he extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage," the supporting spouse's ability to pay, "[t]he needs of each party based on the standard of living established during the marriage," and "[t]he obligations and assets, including the separate property, of each party." (§ 4320, subds. (a), (c)-(e).) "The supporting spouse's ability to pay is 'a key factor' in setting spousal support." (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 824.)

"The trial court has broad discretion balancing and determining the appropriate weight to be given to each factor, ' "with the goal of accomplishing substantial justice for the parties in the case before it." ' " (*In re Schleich*, *supra*, 8 Cal.App.5th at p. 288.) "Once the court does so, the ultimate decision as to amount and duration of spousal support rests

within its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.] ‘Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders.’” (*In re Marriage of Kerr, supra*, 77 Cal.App.4th at p. 93.) Basing spousal support on an erroneous income finding is an abuse of discretion, however. (*In re Marriage of Rosen, supra*, 105 Cal.App.4th at p. 825.)

The trial court here went through each factor under section 4320 on the record with the parties. Husband does not contend the court failed to consider the section 4320 factors. Rather, he argues the court erred in its attribution of income to the parties.

b. *Wife’s income*

i. *The trial court did not abuse its discretion when it did not impute \$3,000 per month in income to wife*

Husband essentially contends the court should have credited wife’s prior statement that she received \$3,000 per month in income over her testimony she did not. The court considered the evidence husband presented: (1) wife’s statement under oath in a November 2011 loan modification application that she receives a lifetime income of \$3,000 per month in dividends, and (2) bank records from August through October 2011 reflecting deposits of about \$3,000 a month. In response to the court’s questions, wife denied having seen the statement, prepared by a paralegal, when she signed the loan documents.

The court weighed the evidence and concluded wife knew she was lying on the loan application. The court also expressed doubt about both parties’ credibility, but ultimately concluded that wife was not making \$3,000 per month. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830 [“trier of fact may believe and

accept as true only part of a witness's testimony and disregard the rest" and appellate court "must accept that part of the testimony which supports the judgment"].)

But the court did not impute income of \$3,000 a month to wife on that basis alone. The court also concluded husband failed to produce evidence wife regularly received \$3,000 per month *at the time of trial* in 2015. The record supports the court's finding. Husband presented only three months of 2011 bank records showing \$3,000 deposits to wife's account. He did not provide the court with any evidence that wife continued to receive those payments. Wife's 2010, 2012, and 2015 income and expense declarations do not state she received \$3,000 in monthly income. Again, we cannot say wife's statements are " "unbelievable *per se* " "; we accept the trial court's credibility determination concerning wife's income. (*Oldham v. Kizer, supra*, 235 Cal.App.3d at p. 1065.)

ii. *The court did not abuse its discretion in finding wife had a "negligible ability to earn a living"*

Husband also argues the court should have considered the \$1.6 million wife received when the couple sold a building and should have imputed at least the minimum wage to wife.

The court specifically considered wife's earning capacity and ability to support herself in determining spousal support. The court found that, while wife may have marketable skills, her felony conviction affected her ability to use them. The court also concluded that, without a formal education or a vocational assessment, it was difficult to assess wife's ability to make more than the minimum wage. The court concluded wife's arson conviction made it unlikely she would be able to get even a minimum wage position, and when she turned 65 in ten months, wife would not be legally required to work. The court found wife had a "negligible ability to earn a living." Based on this record,

the court did not abuse its discretion when it did not impute the minimum wage to wife until she turned 65.

The trial court also considered the parties' assets when weighing the spousal support factors: "Next factor, the obligations and assets including the separate property of each party, . . . we're looking at the assets -- that the assets are going to be divided." We can infer the trial court took into account each party's receipt of \$1.6 million in considering the division of community assets. In its judgment, the court specifically found each spouse received \$1.6 million from the community. The court also heard testimony on this point. Wall testified each party received a \$1.6 million distribution from the community after the couple separated. He testified the parties put some of those funds back into their business, mainly to pay for community debts the parties had personally guaranteed.

Husband seems to argue the court should have taken into account interest income wife would receive from the \$1.6 million distribution in setting spousal support. It is unclear to us how much of the \$1.6 million wife spent to pay community debt, her mortgage, her attorney fees, or other debt. We need not determine how much remains, however. "The income-generating potential of [w]ife's assets is not relevant to [h]usband's ability to pay support." (*Schleich, supra*, 8 Cal.App.5th at p. 290.) The court considered the parties' assets as section 4320 requires. As wife and husband each received \$1.6 million, we can infer the court gave that factor little weight. We cannot find it abused its discretion in doing so.

- c. *The trial court did not abuse its discretion in determining husband had the ability to pay spousal support*
 - i. *The spousal support award is not unreasonable based on the trial court's income finding*

Husband's primary contention is that the court based its spousal support award on an incorrect income calculation for him. As noted, substantial evidence supports the court's finding that husband's income from his business was substantially more than that reflected in his tax returns. The court also specifically considered husband's earning capacity and ability to pay. It concluded husband had "done a remarkable job of rehabilitating his income capacity and has done very well in terms of that capacity. [¶] Looking at the expert report of David Wall[,] which has not really been refuted by competent evidence, the amount that has been calculated as available cash flow for [husband] is something above \$18,000 per month." The court concluded husband had substantially more income than wife.

We cannot say the court's award of \$3,000 per month for one year, stepped down to \$2,000 per month for one year, followed by \$1,000 per month for one year, stepped down to zero, is unreasonable based on husband's income from his company.

- ii. *The trial court implicitly found that husband's wife's income did not affect the award*

Husband contends that, even if Wall's income calculation were correct, the court erred. The court, husband argues, should have reduced the \$18,000 monthly income figure by half because half of the pass-through income from Damex should be attributable to his new wife. "The income of a supporting spouse's subsequent spouse or nonmarital partner shall not be considered when determining or modifying spousal support." (§ 4323, subd. (b).)

While the trial court did not explicitly state it was discounting husband's income by his new wife's salary when considering his ability to pay, its comments reflect that consideration. Weighing the section 4320 factors, the court addressed the parties' needs. The court recognized husband was living with his new wife and six-year-old son. In response to the court's questions, husband told the court he and his wife both worked for Damex and shared one salary. The court responded, "That actually affects things in terms of saying that if you are looking at the income that comes into the company as being split, as opposed to being just attributable to [husband], then that reduces the level to which we're looking, with regard to monthly available income."

Husband contends these comments show the court acknowledged the \$18,000 figure should be reduced to \$9,000 in available income for support. The record does not support that contention. The 2013 tax records lodged with this court show husband's new wife had no ownership interest in Damex. Damex's K-1 schedule states husband owns one hundred percent of the shares. Thus, one hundred percent of the pass-through business income from Damex properly could be allocated to husband.

The only evidence before the trial court as to new wife's salary was husband's testimony that they "share[d] one salary." But husband's November 2013 income and expense declaration stated the gross monthly income for his new wife (then his girlfriend) was unknown. In that declaration husband stated he was paid \$3,000 a month. Damex's 2013 tax return deducted \$30,000 as "[c]ompensation of officers." Husband and new wife's 2013 joint tax return lists "other income" from Damex of \$30,000, as well as \$42,337 in S corporation income from Damex. (Wall's analysis found Damex's cash flow substantially higher.) In the

fall of 2013, Damex issued checks to husband for \$3,000, noted as “[s]alary.” The checks are made out to husband only, not his wife.

Based on the record and the court’s comments, we infer the court did not consider the full \$18,000 per month as available income to pay spousal support. We also infer the court implicitly found husband able to pay the ordered spousal support without contribution from his new wife’s salary. (See *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 [judgment “is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness”].)

6. Section 2030 attorney fees and costs

Husband contends the court abused its discretion in awarding wife \$75,000 in attorney fees and costs under section 2030 because it (1) did not consider the factors relevant under sections 2030 and 2032; (2) awarded fees in excess of those requested; and (3) did not base the need and ability to pay fees on accurate income calculations.

Affirmatively to prove a “trial court erred by failing to make factual findings on an issue,” an appellant must first “secure a statement of decision” under section 632 of the Code of Civil Procedure. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58; *In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1134.) The trial court was not required to issue a statement of decision in support of its order and neither party requested one. (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 981 [order awarding attorney fees under sections 271 and 2032].) We thus “infer the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the judgment.” (*Fladeboe*, at p. 60.) We review the implied factual findings for substantial evidence. (*Ibid.*)

a. *Applicable law*

In marriage dissolution proceedings, the court must “ensure that each party has access to legal representation . . . to preserve each party’s rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party, or to the other party’s attorney, whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.” (§ 2030, subd. (a)(1).)

Section 2030, subdivision (a)(2) requires the court to “make findings on whether an award of attorney’s fees and costs” “is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney’s fees and costs.” Section 2032, subdivision (a) in turn requires any award under section 2030 to be “just and reasonable under the relative circumstances of the respective parties.” In making that determination, the court must “take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party’s case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320.” (§ 2032, subd. (b).)

The statute expressly acknowledges that “[t]he fact that the party requesting an award of attorney’s fees and costs has resources from which the party could pay the party’s own attorney’s fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested.” (§ 2032, subd. (b).) The court is not limited to considering the parties’ financial circumstances, as “[f]inancial resources are only one factor for the court to consider in determining how to

apportion the overall cost of litigation equitably between the parties under their relative circumstances.” (*Ibid.*)

b. *The court considered the required factors*

i. *Need and ability to pay*

The trial court considered wife’s need for contribution of fees and husband’s ability to pay fees, taking into account the circumstances described in section 4320. The court made those specific findings in its ruling:

“[T]he Court finds that [wife] is currently unemployed, and that based upon her age, skills and felony conviction, she is unlikely to become employed in any capacity in the future. [Husband], on the other hand, is below retirement age, in good health, has a successful business despite his own felony conviction, and has a high standard of living. The Court has evaluated all relevant factors, including the [] Section 4320 factors, and finds based thereon that [husband’s] income, assets and financial capacity at this time are substantially greater than those of [wife], and that [husband] is far better financially able to pay the attorney’s fees and costs incurred by himself as well as to contribute to the attorney’s fees and costs of [wife] than is [wife], and that the awarding of said fees and costs is just and proper under Section 2030. The Court finds that the fees and costs being ordered were reasonably incurred by [wife.]”

We can infer the court did not limit its findings to these section 4320 factors, but considered those in sections 2030 and 2032 as well. When the court ordered supplemental briefing on the fee issue it explained, “[B]ecause the factors relating to the award of attorney’s fees include the 4320 factors, you can set

those out as well.” We can infer the court meant the section 4320 factors in addition to the section 2030 and section 271 factors. The court also specifically referred to the ordered fees being “just and proper” under section 2030.

ii. *Reasonableness of fees*

Husband nevertheless contends the court did not consider the factors as required by *Keech, supra*, 75 Cal.App.4th at p. 870. There, the appellate court reversed an award of attorney fees and costs under section 2030 because the trial court’s decision did not “reflect consideration of husband’s ability to pay wife’s professional fees . . . , [did] not reflect consideration of the respective litigation needs of the parties, and [did] not reflect consideration of whether the fees allegedly incurred were reasonably necessary.” (*Keech*, at p. 867.) The court explained, “ ‘The major factors to be considered by a court in fixing a reasonable attorney’s fee [include] ‘the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney’s efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause and the time consumed. [Citations.]’ [Citations.]’ [Citation.]” (*Id.* at p. 870.)

The appellate court acknowledged the rule permitting a trial court to “ ‘rely on its own experience and knowledge in determining [the] reasonable value’ ” of services “ ‘*when the trial court is informed of the extent and nature of the services rendered.*’ ” (*Keech, supra*, 75 Cal.App.4th at p. 870.) But there the wife seeking fees under section 2030 submitted only part of her accountant’s bills; she did not submit her attorney’s bills or a declaration from her counsel about “the amount of time spent,

the nature of the work done, or the rate charged.” (*Keech*, at p. 864.) The wife’s only evidence of her attorney fees was her declaration that she owed her lawyer about \$31,000. (*Ibid.*) Because the trial court “was not apprised of the nature and extent of the services rendered, . . . it could not determine their reasonable value based upon its own expertise.” (*Id.* at p. 870.)

The facts here are different. Wife’s supplemental brief addressed the necessity and reasonableness of the fees requested. Wife here submitted bills and supporting declarations from both her attorney and her accountant. The bills identify the nature of the services rendered and fees billed. The supporting declarations also explain the services provided, the expertise of those who provided the services, and the reasons for the services. The trial court, therefore, was in a position to apply its own expertise to determine if the fees charged were reasonable and necessary.

We can infer the trial court did so—having considered both parties’ evidence and arguments—and made implied findings on the *Keech* factors to conclude “the fees and costs being ordered were reasonably incurred by [wife].” Substantial evidence supports the trial court’s implied findings that the \$75,000 in attorney fees and costs were reasonable and necessary considering the *Keech* factors.

In his supplemental brief to the trial court, husband also argued the \$154,000 in fees Wall charged were disproportionate to the \$72,000 (over three years) of spousal support the court ordered. Wife employed Wall’s services to establish husband’s cash flow from Damex was greater than he represented. The court could conclude Wall’s work was not disproportionate to the benefit wife received, as husband had asked the court to award no spousal support based on a claimed income of \$3,000 (not \$18,000) per month. Wall also calculated spousal support

arrears; he stated his fees and costs increased due to husband's willful violation of the court's orders. Moreover, husband presented no evidence that Wall's and his staff's rates were higher than average or that the work they did should have taken less time.

Nor did husband present any evidence to support his contention that the fees wife's attorney Berman charged were excessive or unjustified. Husband argued Berman's rate of \$425 per hour was too high, but he made no showing that that rate was out of line, other than his own attorney's lower rate of \$275 per hour. He also argued wife's attorney improperly block-billed, overcharged for some tasks, and did not provide sufficient detail, making it impossible to determine if the fees were reasonable. Berman's invoices describe the work he or his associates performed. In places, the specific subject matter is redacted to protect attorney-client confidentiality. We can infer, however, that the trial court was able sufficiently to decipher the work Berman performed and reduced the requested fees and costs to those it found reasonable.

Husband argues the trial court could not have considered the required factors because its ruling "made no mention of double, triple billing by Mr. Wall, and did not address any factors regarding the legal skills necessary for whatever the degree of difficulty was, or other aspects as noted [in *Keech*]." But the court considered the parties' supplemental briefing, the evidence, and the court file. We thus can infer the court considered husband's arguments about the reasonableness of the attorney and accountant fees and rejected them. The court's award of only 60 percent of the requested fees (\$75,000 of the \$125,000 wife asked for) also reflects its consideration of reasonableness. The court's ruling explicitly found "the fees and costs being ordered were reasonably incurred by [wife]."

While the court's ruling did not articulate specific factual findings on the section 2030 factors discussed in *Keech*, it did not need to. The court stated it "evaluated *all relevant factors*." (Italics added.) We infer "relevant factors" included the *Keech* factors. These implied factual findings support the court's award of attorney fees and costs to wife. The trial court did not abuse its discretion.

c. *Wall's fees are recoverable as costs under section 2030*

Husband also takes issue with the court's award because it is greater than the \$64,785 in attorney fees requested by wife's attorney, Berman. Husband argues, "Nothing in the record indicates that other costs and fees, and expert fees were part of the court's consideration." He seems to imply the attorney must have incurred the "costs"—i.e., that Berman would have had to have paid Wall's fees directly—for them to be awarded under section 2030. Husband is wrong. "Attorney fees, financial experts, other experts, witness fees, and other costs are all awardable" under sections 2030 and 2032. (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1315 [citing Gray & Wagner, Complex Issues in Cal. Family Law, Vol. I, Complex Financial Issues in Determining Support, Fees, and Sanctions (2009) Public Policy, Purpose and Philosophy Underlying Support, Professional Fees and Sanctions, § 12.13].) Wife's counsel asked for a contribution to Wall's fees, which totaled over \$150,000, in her brief. The court's ruling specifically states the award is "a contribution to [wife's] attorney's fees and costs incurred." We infer the court included a portion of the accountant's fees as costs in its section 2030 award. "The awarding of accountant's fees is within the discretion of the court." (*Golden v. Golden* (1969) 270 Cal.App.2d 401, 407.) We cannot say the court abused its discretion in awarding wife part of Wall's fees when Wall's analysis was the focus of the trial.

- d. *The evidence supports the trial court’s implied findings of wife’s need and husband’s ability to pay*

Finally, substantial evidence supports the court’s conclusion that wife needed contribution to her fees and that husband had the ability to pay his fees and part of wife’s. As discussed, the record “showed a significant disparity in the parties’ respective income earning capacities,” making the award appropriate under section 2030. (*Schleich, supra*, 8 Cal.App.5th at p. 294.) Additional factors—such as husband’s refusal to comply with court orders resulting in increased litigation costs—support the court’s decision as well.

“We will not reverse a need-based award ‘absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order.’” (*Schleich, supra*, 8 Cal.App.5th at p. 295.) Again, we find no abuse of discretion.¹⁵

7. *Sanctions under section 271*

Section 271 provides,

“the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney’s fees and costs

¹⁵ Unlike spousal support awards, courts are not barred by statute from considering a subsequent spouse’s income in awarding section 2030 fees. (See *Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 255 [section 2032’s expansive language—the “‘relevant circumstances of the respective parties’”—shows “new mate” income is relevant for fee awards].)

pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award."

(§ 271, subd. (a).)

Thus, section 271 " " "authorizes sanctions to advance the policy of promoting settlement of litigation and encouraging cooperation of the litigants" and "does not require any actual injury." [Citation.] Litigants who flout that policy by engaging in conduct that increases litigation costs are subject to imposition of attorney fees and costs as a section 271 sanction.' " (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1524.)

"Sanctions under section 271 are committed to the discretion of the trial court, and will be reversed on appeal . . . 'only if, considering all of the evidence viewed more favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.' " (*In re Marriage of Davenport, supra*, 194 Cal.App.4th at p. 1524.)

The trial court ordered husband to pay sanctions under section 271 "based upon the fact that throughout the trial in this matter, the Court found that [husband] was less than forthcoming in his presentation of the facts, that he attempted to conceal assets and financial information from [wife], that he transferred funds in an attempt to mislead the Court as to the profits of his business, that his income was far in excess of what

he represented to [wife], and that he did not respond to discovery or participate in settlement negotiations in good faith.”

Husband argues that under *Sagnowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, the section 271 award is improper because the court did not “tether” it to wife’s fees and costs.¹⁶ We can infer the court did tether the \$25,000 amount to wife’s fees and costs because that is what wife requested. She argued she incurred additional fees and costs as a result of husband’s refusal to respond to discovery and to appear at his deposition, as well as his attempts to hide his assets and income.

Although wife did not cite a specific instance where husband failed to participate in settlement negotiations, the court reasonably could find husband’s obstreperous conduct frustrated wife’s ability to engage in settlement negotiations with husband and “flouted” the policy of encouraging settlement and cooperation by increasing litigation costs. That evidence also exists of wife’s failure to attend a settlement conference—as husband notes—is immaterial. We view the evidence in the light most favorable to the order. Here, substantial evidence supports the court’s implied finding that husband’s conduct frustrated

¹⁶ In *Sagnowsky*, the trial court awarded sanctions under section 271 of \$180,000 specifically for the reduction of the sales price of property caused by the appellant’s conduct and of \$500,000 specifically for her “‘relentless and culpable conduct’ in driving ‘up the cost of litigation . . .’ and ‘purposefully frustrat[ing] the final settlement of this post-judgment case.’” (*Sagnowsky*, at p. 1151.) The appellate court concluded section 271 did not authorize the court to award those amounts to punish appellant for her conduct “because those amounts b[ore] no relationship to [respondent’s] attorney fees and costs.” (*Id.* at p. 1156.)

the policy of promoting settlement and increased the cost of litigation:

- Husband failed to respond to discovery requiring wife to file three motions to compel and to obtain discovery sanctions.
- Husband did not pay court-ordered temporary spousal support resulting in more attorney fees and costs to prepare attachments and levies on husband's funds and to calculate and argue for arrears at trial.
- Husband was not forthcoming about his company's profits and expenses resulting in additional fees and costs to discover husband's true income.

On this record the trial court did not abuse its discretion when it ordered husband to pay \$25,000 as a sanction under section 271. Unlike the \$680,000 in sanctions in *Sagnowsky*, the \$25,000 award is directly related to wife's increased attorney's fees and costs. The trial court considered "the parties' incomes, assets, and liabilities" during the trial; we can infer the court did so in making this award as well. And, the court awarded only one third of the amount wife requested. We infer the court did so to ensure the sanction did not "impose[] an unreasonable financial burden" on husband.¹⁷

¹⁷ The Family Code does not bar consideration of husband's new wife's income in awarding section 271 fees.

DISPOSITION

The judgment and the order awarding attorney fees and costs are affirmed. Barbara Nania is to recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

MURILLO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.